

HONORABLE ROBERT S. LASNIK

UNITED STATES DISTRICT COURT
FOR THE WESTERN DISTRICT OF WASHINGTON
AT SEATTLE

UNITED STATES OF AMERICA,

Plaintiff,

vs.

DIRK WALTER TICHGELAAR,

Defendant.

Cause No. CR 21-114 RSL

**DEFENDANT'S
RESTITUTION
MEMORANDUM**

Defendant Dirk Tichgelaar, by and through his attorney, Gilbert H. Levy, respectfully submits the following memorandum regarding the Government's request for restitution:

I. RELEVANT FACTS

Pursuant to guilty pleas, the Defendant was convicted of possession of child pornography pursuant to Title 18 United States Code § 2252(a)(5)(B) in Case No.

1 CR 21-114 RSL and enticement of a minor pursuant to Title 18 United States
 2 Codes § 2422(b) in Case No. CR 21-115 RSL. The Defendant was sentenced to a
 3 term of 120 months in the child pornography case and 180 months in the
 4 enticement case with the sentences to run consecutively. The Government is now
 5 seeking an award of restitution in the child pornography case pursuant to Title 18
 6 United States Code § 2259.

8 The Government has provided the defense with loss information for nine
 9 victims corresponding to the individuals depicted in the images that the Defendant
 10 possessed. The information includes the total loss amount for each victim and the
 11 amount that the Defendant is requested to pay based on his proportionate share of
 12 the loss. The Defendant is not contesting the total loss amounts. In the case of
 13 several of the victims, the Government is requesting that the Defendant be required
 14 to pay more than the statutory minimum of \$3,000.00. The Defendant maintains
 15 that his obligation should be limited to the statutory minimum for the reasons set
 16 forth below.

17 II. AUTHORITY AND ARGUMENT

18 Title 18 United States Code § 2259 provides that restitution in child
 19 pornography cases is mandatory. In *Paroline v. United States*, 572 U.S. 434, 134
 20 S. Ct. 1710 (2014) the Court held that in child pornography cases where a
 21
 22
 23

1 particular victim's images have been publicly disseminated and there are
 2 potentially numerous defendants who have produced and/or possessed those
 3 images, a particular defendant's restitution obligation should be limited to his or
 4 her proportionate share. The Court stated:

6 where it can be shown both that a defendant possessed a victim's
 7 images and that a victim has outstanding losses caused by the continuing
 8 traffic in those images but where it is impossible to trace a particular amount
 9 of those losses to the individual defendant by recourse to a more traditional
 10 causal inquiry, a court applying § 2259 should order restitution in an amount
 11 that comports with the defendant's relative role in the causal process that
 12 underlies the victim's general losses. The amount would not be severe in a
 13 case like this, given the nature of the causal connection between the conduct
 14 of a possessor like Paroline and the entirety of the victim's general losses
 15 from the trade in her images, which are the product of the acts of thousands
 16 of offenders. It would not, however, be a token or nominal amount. The
 required restitution would be a reasonable and circumscribed award imposed
 in recognition of the indisputable role of the offender in the causal process
 underlying the victim's losses and suited to the relative size of that causal
 role. This would serve the twin goals of helping the victim achieve eventual
 restitution for all her child-pornography losses and impressing upon
 offenders the fact that child-pornography crimes, even simple possession,
 affect real victims. *Id.* at 458-459.

17 The Court went on to suggest factors that that could in considered in
 18 determining the appropriate amount:

19 These could include the number of past criminal defendants found to
 20 have contributed to the victim's general losses; reasonable predictions of the
 21 number of future offenders likely to be caught and convicted for crimes
 22 contributing to the victim's general losses; any available and reasonably
 23 reliable estimate of the broader number of offenders involved (most of
 whom will, of course, never be caught or convicted); whether the defendant
 reproduced or distributed images of the victim; whether the defendant had

1 any connection to the initial production of the images; how many images of
 2 the victim the defendant possessed; and other facts relevant to the
 3 defendant's relative role. Id. at 460.

4 The factors are intended as rough guideposts rather than a fixed formula in
 5 determining the amount that fits the offense. Id.

6 After *Paroline*, § 2259 was amended. As amended, subsection (2) provides:

7 If the defendant was convicted of trafficking in child pornography,
 8 the court shall order restitution under this section in an amount to be
 9 determined by the court as follows:

10 (A) The court shall determine the full amount of the victim's losses
 11 that were incurred or are reasonably projected to be incurred by the victim as
 12 a result of the trafficking in child pornography depicting the victim.

13 (B) After completing the determination required under subparagraph
 14 (A), the court shall order restitution in an amount that reflects the
 15 defendant's relative role in the causal process that underlies the victim's
 16 losses, but which is no less than \$3,000.

17 (C) A victim's total aggregate recovery pursuant to this section shall
 18 not exceed the full amount of the victim's demonstrated losses. After the
 19 victim has received restitution in the full amount of the victim's losses as
 20 measured by the greatest amount of such losses found in any case involving
 21 that victim that has resulted in a final restitution order under this section, the
 22 liability of each defendant who is or has been ordered to pay restitution for
 23 such losses to that victim shall be terminated. The court may require the
 victim to provide information concerning the amount of restitution the
 victim has been paid in other cases for the same losses.

19 In *United States v. Galan*, 804 F. 3d 1287 (9th Cir. 2015), the Court of
 20 Appeals held that a defendant compelled to pay restitution under § 2259 should not
 21 be obligated to pay for losses that he or she did not cause. If the defendant was not
 22 the original abuser, the defendant should not be held liable for losses caused by the
 23

1 original abuse and these losses should be disaggregated from the amount that is
2 required to be paid.

3 In *United States v. Hoffman*, 2022 WL 4017980 (W.D. Wash. 2022), Judge
4 Lin was presented with a restitution claim like the one in this case. The defendant
5 simply possessed the material and did not produce it. Judge Lin noted that §2259
6 does not prescribe specific factors to be considered in determining the defendant's
7 proportionate share and the court is therefore left with the factors mentioned in
8 *Paroline*. Judge Lin noted that the number of future defendants likely to be caught
9 and prosecuted and the broader number of offenders involved was essentially
10 unknowable and this plus the absence of other information in that case made it
11 essentially impossible for the court to calculate the appropriate amount of
12 restitution. As a result, restitution in that case was limited to the mandatory
13 minimum of \$3,000.00 for each victim.

14 In this case, the Government has failed to provide any information to assist
15 the Court in calculating the Defendant's share of the restitution. It failed to
16 provide information as to the number of defendants who have previously paid
17 restitution although this information presumably is known to those making the
18 claims. It failed to provide information as to whether any of the claimants have
19 been paid in full. It failed to provide any basis upon which future defendants or
20
21
22
23

1 future offenders can be calculated. It failed to disaggregate amounts attributable to
2 the original abuse. In addition to these deficiencies, the Court may wish to
3 consider that the Defendant is likely to spend the rest his life in prison and his
4 ability to make restitution payments of any amount is extremely limited. To the
5 extent that there is a punitive factor in the restitution obligation, the Defendant has
6 already been punished enough.
7

8 III. CONCLUSION

9 The Court should limit the amount of restitution awarded in this case to
10 \$3,000.00 per victim.
11

12 I certify that the memorandum contains 1,322 words as required by the
Local Criminal Rule.

13 DATED: September 30, 2024.
14
15

16 /s/Gilbert H. Levy

17 Gilbert H. Levy, WSBA #4805
18 Attorney for Defendant
19
20
21
22
23

CERTIFICATE OF SERVICE

I certify that on September 30, 2024, I caused to be electronically filed the foregoing document with the Clerk of Court using the CM/ECF system, which will send notification of such filing to the attorney(s) of record.

/s/Gilbert H. Levy
Gilbert H. Levy WSBA# 4805
Attorney for Defendant